

1 A. No, it is not.

2 Q. Did someone specifically request this
3 from NBC?

4 A. I did.

5 Q. What was the reason for the request?

6 A. I was asked to by counsel.

7 Q. What does this release schedule
8 represent?

9 A. This was the programming that was on
10 in the 1990-91 schedule for NBC's primary time
11 programming.

12 Q. Are these the programs that actually
13 ran?

14 A. Yes.

15 Q. NBC sent this directly to you?

16 A. Correct.

17 Q. Did they have to do a special run on a
18 computer?

19 A. They have it in their system. They
20 just had to print a hard copy.

21 Q. There are some handwritten notations
22 on this schedule. Do you know who made those?

1 A. I did.

2 Q. What was the purpose of making the
3 handwritten notations?

4 A. I was identifying those NBC programs
5 that dealt with issues and concerns that were
6 relevant to the Baltimore community.

7 Q. During the applicable time period?

8 A. That's correct.

9 Q. When did you make those notations?

10 A. After I received the report.

11 Q. That would have been in October of
12 '91?

13 A. Yes.

14 Q. Did you make those notations about
15 issues on your own initiative or had you
16 previously discussed this with someone else?

17 A. I discussed it with counsel.

18 Q. Let me ask you about the bottom of
19 page 1. It says, "Monday, 8:30 to 9:30 p.m,
20 8-19-91." Then, it says, "The Geek," and then,
21 it says, "OAD." Does that mean original air
22 date?

1 A. Yes.

2 Q. This was a rebroadcast of a program
3 that had been run 2-25-91?

4 A. Right.

5 Q. Then you have, "Youth Concerns," and a
6 mark, "Preempted by Orioles baseball." I
7 gather this program did not run on WMAR-TV?

8 A. That's correct.

9 Q. This sheet would not reflect local
10 preemptions unless you wrote them in?

11 A. Right. That's why I wrote them in.

12 Q. Now, again on the first page, it says,
13 "8-12-91, Such a Night," and you wrote in
14 "Youth Concerns." Did you review the tape of
15 that program before writing in the word, "Youth
16 Concerns?"

17 A. No. I believe the rest of the
18 documentation you have has descriptions of the
19 actual programs.

20 Q. You arrived at the Youth Concerns by
21 reviewing some of the other materials?

22 A. The program synopsis.

1 Q. I'm going to give you a piece of paper
2 dated 25 August '92, Sort Media, and it has
3 Supreme Court in the upper-right corner. Is
4 that what you reviewed to write in the issues?

5 A. Actually, the document that I used
6 didn't look quite like this. This is a news
7 document. There was a similar, although
8 different format, there was a similar synopsis
9 for entertainment programming.

10 Q. Do we have that?

11 A. Yes, you do.

12 Q. I'd like to turn your attention to
13 page SH007839. If you look down under 4-11-91,
14 it says, "Cliff and Jay," then you wrote in,
15 "Health and Safety," and then it's crossed out.
16 The same is true for "Theo and the Kids," one
17 and two and they are followed by, "Youth
18 Concerns" and it's crossed out. Why are those
19 crossed out?

20 A. Probably because they were preempted.

21 Q. What period of time did you ask NBC to
22 provide?

1 A. Essentially, the months of June, July,
2 August and September of '91.

3 Q. Did anyone else at the station work on
4 this document?

5 A. No.

6 Q. We'll get back to this in a minute.
7 Let me ask you about a document that I believe
8 is related to the release schedule. I'm going
9 to show you a copy of a document that's
10 entitled, "Blossom," it's dated 10-2-91, then
11 it says, "1990-1991 Season," and on there they
12 show episodes of "Thanks for the Memorex," "The
13 Geek," and "Tough Love." Under "The Geek," it
14 says, "Air date, 2-25-91; second run, 8-19-91;
15 episode 8, The Geek." Is that what you used to
16 arrive at the conclusion that the program
17 treated youth concerns?

18 A. Yes.

19 Q. That was true for the other episodes
20 on the release schedule list where you
21 indicated issues?

22 A. Yes.

1 Q. You used the synopses that you
2 received from NBC, and you received those
3 synopses at the same time as the release
4 scheduled?

5 A. That's correct.

6 Q. I gather you asked for them together?

7 A. Right.

8 Q. Did you write any kind of a letter to
9 NBC asking for this information?

10 A. No, I did not. I made a phone call.

11 Q. Let's get back to 25 August 1992, Sort
12 Media, and this has the Supreme Court over on
13 the right-hand side. Have you seen that page
14 before?

15 A. Yes, I have.

16 Q. When did you first see that page?

17 A. It was in the fall of 1992.

18 Q. This is a representative document,
19 again, of a number of things that we received.
20 Did you prepare this material?

21 A. No. I asked NBC to prepare it --
22 well, to pull it out of their files.

1 Q. Was that on your own initiative or
2 upon advice of counsel?

3 A. On advice of counsel.

4 Q. What exactly did you ask NBC for?

5 A. I asked them for a synopsis of news
6 programming that related to issues and concerns
7 that were relevant to the Baltimore market.

8 Q. And they sent you a file of material?

9 A. Yes.

10 Q. On this document there is a
11 handwritten notation. Is that your
12 handwriting?

13 A. No, it is not.

14 Q. Do you know whose it is?

15 A. Probably the person in the file room
16 at NBC.

17 Q. Person in the file room in NBC wrote
18 Supreme Court?

19 A. Yes, because I specifically asked them
20 for issues concerning the Supreme Court because
21 that was one of the issues of concern at that
22 time. So, perhaps to make it easier, she just

1 wrote Supreme Court on all documents related --
2 as I recall she put it on the first page of
3 that pile of synopses.

4 Q. To the extent that we have synopses
5 that reflect other issues, that was the person
6 at NBC wrote that on because you had requested
7 programs that addressed that issue?

8 A. That's correct.

9 Q. Did you tell NBC that you were looking
10 for programming that had occurred back in 1991
11 addressing that issue?

12 A. That's correct.

13 Q. The program that we have here -- can
14 you tell me where it shows the date of the
15 program?

16 A. Sure. Date of event is up on -- see
17 it? It says, "910604." That's June 4, 1991
18 and, apparently, it was also June 3 of '91.
19 They put the year first, then the month, and
20 then the day.

21 Q. You asked the person at NBC for
22 programs that addressed certain issues in June,

1 July, August and September 1991?

2 A. Yes.

3 Q. When did you make that telephone call
4 to NBC?

5 A. It was sometime during that -- I don't
6 know exactly. It was sometime during that
7 summer.

8 Q. Of '92?

9 A. Yes.

10 Q. Approximately, August of '92?

11 A. Probably sometime before August 25.

12 Q. Did you receive those documents back
13 sometime around August 25?

14 A. Yes. As best as I recall, it was
15 sometime that late summer, early fall.

16 Q. They came back to you?

17 A. Yes.

18 Q. Did you then do anything with them?

19 A. No.

20 Q. You didn't make --

21 A. I made no notations, no.

22 Q. You mentioned that you gave NBC a list

1 of issues?

2 A. Yes.

3 Q. Was that in writing?

4 A. No, it was not. Actually, it was
5 faxed to them.

6 Q. Would you have a copy of that fax?

7 A. No, I don't.

8 Q. Do you know what the issues were that
9 you asked for?

10 A. Yes. They were the issues that were
11 on our programs issues lists from second
12 quarter and third quarter 1991.

13 Q. All of the issues that were on the
14 list, or just some of them?

15 A. All of the issues relating to this
16 period of time.

17 Q. Who did you contact at NBC?

18 A. I don't remember the woman's name, to
19 be honest with you. It was an archivist or the
20 manager of archives.

21 Q. Was that to whom you faxed the letter?

22 A. Yes.

1 program?

2 A. They agreed to come in and act as a
3 volunteer organization and man the office under
4 the supervision of a paid employee, Cindy
5 Hilbert. I can't speak for them because I
6 don't know why they chose to do that, but it is
7 their responsibility to supply volunteers who
8 can be trained to answer the telephones and
9 deal with the questions the consumers might
10 have.

11 Q. That was initiated under the Gillette
12 stewardship?

13 A. Yes.

14 Q. You were asked a series of questions
15 about your personal executive weekly minder
16 calendar from 1991. Does your calendar reflect
17 all the meetings that you had vis-a-vis the
18 programming and operation of the station?

19 A. Every single meeting?

20 Q. What does it reflect in terms of
21 meetings?

22 A. It reflects my appointments,

1 generally, that I made during that time.

2 Q. Scheduled appointments?

3 A. Scheduled appointments, so there is no
4 reflection of my work on programming or
5 operations.

6 Q. What instructions were you given when
7 you were given a copy of the Motion to Produce
8 Documents which you discussed here? Were you
9 given any oral instructions?

10 A. By counsel?

11 Q. Yes.

12 A. I was told to read through it, and
13 make sure I understood it, and supply
14 everything that the document asked for.

15 Q. Did you have any questions?

16 A. Yes.

17 Q. Would you tell us to whom --

18 MR. HOWARD: Objection.

19 MR. GOLDSTEIN: I'd like to know the
20 scope --

21 MR. HOWARD: Do you want to explain
22 the purpose of why you want to know that?

1 MR. GOLDSTEIN: I just want to make
2 sure the record is fully clear that there was a
3 thorough process and that she understood
4 everything. I think it would help the record
5 if we know what the exchange was to get that
6 information.

7 BY MR. GOLDSTEIN:

8 Q. Do you recall what questions you
9 asked?

10 A. I need to look at the document to tell
11 you that.

12 Q. Sure.

13 A. I believe I asked about Item Number 7.

14 Q. Can you just tell us what number 7 is?

15 A. "The term documents refers to the
16 original in each tangible thing including or
17 reproducing in any manner," et cetera. I
18 specifically asked if we had to produce the
19 video tape copies of everything, because I
20 didn't understand if we had to do that or not.

21 I specifically asked if this implied
22 every document including handwritten notes and

1 things of that nature.

2 Q. What answer were you given to that?

3 A. Any document relating to the
4 production of any of these documents was
5 relevant. I don't recall specifically every
6 question I had when I went through the list
7 with them.

8 Q. What did you do with the documents you
9 found?

10 A. What did I do with the documents I
11 found?

12 Q. Yes.

13 A. I gave them to counsel.

14 Q. There were no limits on what you
15 found? You just gave everything lock, stock
16 and barrel that you thought was relevant at the
17 time?

18 A. Right.

19 Q. Did there come a point in time when
20 you were asked to look a second time?

21 A. Yes.

22 Q. When was that?

1 A. That occurred approximately, I
2 believe, a week ago.

3 Q. What explanation were you given to go
4 back and look?

5 A. That we wanted to make doubly sure
6 that we had everything that was relevant.

7 Q. Based upon your deposition today, does
8 that bring to mind any documents that you may
9 have seen and perhaps overlooked that you may
10 now want to give to counsel?

11 A. As of right now?

12 Q. As of this moment?

13 A. No.

14 Q. You were asked earlier about news
15 Channel 2 sponsored projects and you were asked
16 what projects fell within this time frame.
17 Next to each of the projects there is a dollar
18 figure as to dollars raised. What is the basis
19 or the source of the information?

20 A. The organization that the money was
21 raised for gave us that figure.

22 Q. Do you have accessible the document

APPENDIX B

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In re Application of)	MM Docket No. 93-94
)	
Scripps Howard)	File No. BRCT-910603KX
Broadcasting Company)	
)	
For Renewal of License of)	
Station WMAR-TV,)	
Baltimore, Maryland)	
)	
and)	
)	
Four Jacks)	File No. BPCT-910903KE
Broadcasting, Inc.)	
)	
For a Construction Permit for)	
a New Television Facility on)	
Channel 2 at Baltimore, Maryland)	
 To: The Honorable Richard L. Sippel Presiding Administrative Law Judge		

**OPPOSITION TO REQUEST FOR PERMISSION TO
FILE AN APPEAL OF THE ORDER DENYING THE
REQUEST FOR ISSUANCE OF A SUBPOENA DUCES TECUM**

1. Less than three weeks before the hearing in this matter is scheduled to commence, Four Jacks Broadcasting, Inc. ("Four Jacks") requested that the Presiding Judge issue a subpoena duces tecum requiring National Broadcasting Company ("NBC") to produce documents that Four Jacks became aware of no later than July 16, 1993. The Presiding Judge appropriately denied this last-minute request because, among other things, Four Jacks could have sought the subpoena three months ago, and issuing it now could cause disruption and delay. Similarly, permitting an appeal to the Commission less than two weeks before the hearing is scheduled to commence would be even more likely to cause disruption and delay.

Four Jacks' Request for Permission to File an Appeal of the Order Denying the Request for Issuance of Subpoena Duces Tecum ("Request for Permission to File and Appeal"), therefore, should be denied.

2. According to Four Jacks, the basis for its subpoena request is the testimony of the Acting General Manager of WMAR-TV, Emily Barr, in her July 16, 1993 deposition. At that time, Ms. Barr testified that she contacted NBC for its records relating to certain programming that was broadcast on WMAR-TV during the license term. Ms. Barr also testified on July 16 that she did not retain copies of her written request to NBC. See Deposition of Emily Barr, excerpts of which are attached to Four Jacks' Request for Issuance of Subpoena Duces Tecum, at 108-09.¹

3. Four Jacks, therefore, was aware of the possible existence of the documents sought by the subpoena and that those documents were not in the possession of WMAR-TV over three months ago (and prior to the close of discovery in this matter on July 30, 1993). Yet, Four Jacks offered no explanation, either in its Request for Issuance of Subpoena Duces Tecum or in its Request for Permission to File an Appeal, as to why it waited until the eve of the hearing before requesting this subpoena.

4. Furthermore, an appeal at this time would likely delay resolution of this matter and, therefore, prejudice WMAR-TV. First, as the Presiding Judge pointed out in his Order denying Four

¹ Four Jacks statement in ¶ 2 of its Request for Permission to File an Appeal that it has been told that "many documents relevant to this proceeding that should have been in Scripps' files . . . were either missing or destroyed" is entirely uncalled for and has no relevance to the pending issue.

Jacks' subpoena request, if a subpoena is issued to NBC, there may be a motion to quash that subpoena. This alone could disrupt the proceedings and cause significant delay. Second, as the Presiding Judge also noted, Four Jacks' subpoena seeks documents for a broad time period that may or may not exist. Even if the subpoena were issued, a search for the documents is likely to take some time and cause delay. Finally, the process of appealing to the Commission is itself time consuming, and is highly unlikely to conclude before the hearing in this matter is scheduled to commence. In fact, there is no way to be certain about the length of the delay that would be caused by granting Four Jacks' Request for an Appeal because the Rules do not prescribe a time limit within which the Commission must make a decision. In light of these factors, it is difficult to see how an appeal to the Commission would not, despite Four Jacks' claim, delay the proceedings.

5. Consequently, if Four Jacks' Request for Permission to File an Appeal were granted, the distraction and likely delay would significantly prejudice WMAR-TV in this proceeding.

WHEREFORE, Scripps Howard Broadcasting Company respectfully requests that the Request for Permission to File an Appeal of the Order Denying the Request for Issuance of Subpoena Duces Tecum filed by Four Jacks Broadcasting, Inc. be denied.

Respectfully submitted,

Scripps Howard
Broadcasting Company

By: 

Kenneth C. Howard, Jr.
Leonard C. Greenebaum
David N. Roberts
Stephanie S. Abrutyn

Its Attorneys

BAKER & HOSTETLER
1050 Connecticut Avenue, N.W.
Suite 1100
Washington, D.C. 20036
(202) 861-1500

Dated: October 26, 1993

Certificate of Service


I, Ruth Omonijo, a secretary in the law of offices of Baker & Hostetler, hereby certify that I have caused copies of the foregoing "Opposition to Request for Permission to File an Appeal to the Order Denying the Request for Issuance of a Subpoena Duces Tecum" to be hand-delivered this 26th day of October, 1993 to the following:

The Honorable
Richard L. Sippel
Presiding Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W.
Room 218
Washington, DC 20554

Martin R. Leader, Esq.
Fisher Wayland Cooper & Leader
1255 23rd Street, N.W.
Suite 800
Washington, DC 20037
Counsel to Four Jacks
Broadcasting, Inc.

Norman Goldstein
Hearing Branch-Mass Media Bureau
Federal Communications Commission
2025 M Street, NW
Room 7212
Washington, DC 20554

Robert Zauner
Hearing Branch-Mass Media Bureau
Federal Communications Commission
2025 M Street, NW
Room 7212
Washington, DC 20554


Ruth Omonijo

APPENDIX C

TRANSCRIPT OF HEARING TESTIMONY

1 A I, I -- As best as I can recall, it was December
2 1991.

3 Q So all of the reports of Ms. Covington that are
4 referred to in paragraph 31 were oral reports and all of the
5 discussions that you had were oral discussions?

6 MR. ZAUNER: Objection. Asked and answered at least
7 twice.

8 JUDGE SIPPEL: Sustained.

9 BY MS. SCHMELTZER:

10 Q In paragraph 33 on SH3-15, Ms. Barr, there's a
11 reference to the program "Lift Every Voice."

12 A Yes.

13 Q Was that program ultimately discontinued?

14 A No, it was not.

15 Q Did there come a time in 1992 when you decided to
16 put together an exhibit on ascertainment?

17 A I was asked by counsel to do so, yes.

18 Q You were asked by counsel to do so? And what did --
19 what exactly did you do in August of '92?

20 A I, I spoke with the individuals who were mentioned
21 earlier in my testimony, the ones who were primarily
22 responsible for conducting ascertainment interviews, and I
23 asked them to retrieve for me, if they had it, their personal
24 calendars and any information they might have had with respect
25 to ascertainment interviews that they conducted for that

1 four-month-and-two-day period.

2 Q Well, who did you talk to?

3 A I spoke to Arnie Kleiner, Maria Velleggia, Janet
4 Covington, and I, I believe I spoke to Howard Zeiden, although
5 I didn't really get any information 'cause he had since left
6 the employ of WMAR and did not have his calendar at that time.

7 Q Did you speak to anyone -- any of these other people
8 that may have conducted interviews?

9 A I, I, I, I put a -- I spoke to all of the department
10 heads and informed them of what I was doing and asked them if
11 they had information to please forward it to me so that I
12 could put it in this compilation.

13 Q And did they forward you information?

14 A They forwarded me what they had, which, which for
15 those other individuals was nothing.

16 Q So the only people that had any information were
17 Mr. Kleiner, yourself, Maria Velleggia, and Ms. Covington. Is
18 that accurate?

19 A That's correct.

20 Q And you looked at the calendars of yourself,
21 Mr. Kleiner, and Ms. Velleggia. Did you look at Ms.
22 Covington's calendar?

23 A I looked -- Ms. Covington at that point had left the
24 employ of WMAR. So what I asked her to do was if she could
25 find her calendar. I did not know at that time that I would

1 need the actual calendar. What, what Ms. Covington did was
2 she wrote down for me in longhand the meetings that she had
3 held, who they were with, the dates that they were on, and
4 what was discussed in general in those meetings. So I never
5 actually saw her calendar.

6 Q You never actually saw her calendar, but she gave
7 you some notes in longhand?

8 A That's correct.

9 Q When did she give you those notes?

10 A It was sometime during the summer of 1992 when I was
11 asked to compile this document.

12 Q Did you -- Other than the calendars and the notes
13 and recollections, was there anything else that you looked at
14 in compiling your material? Are you looking at Attachment E?

15 A No, I don't believe so. I don't believe so.

16 Q Are you looking at Attachment E?

17 A Yeah. I was just looking at -- Yeah.

18 Q Attachment E is the product of the work that you did
19 in 1992?

20 A That's correct.

21 Q This was a year after the license term ended?

22 A Um-hum.

23 Q When did you actually draft this exhibit? Was it
24 drafted in '92?

25 A Yes, I -- it was compiled during the summer of 1992.